

EMPLOYER STATUS DETERMINATION

San Diego Northern Railway

This is the determination of the Railroad Retirement Board concerning the status of San Diego Northern Railway (SDNR) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C §351 et seq.) (RUIA).

SDNR was formed by the North San Diego County Transit Development Board (NCTD), and was incorporated on May 24, 1994. NCTD¹, a public agency created by Sections 125000 et seq. of the California Public Utilities Code, is the recipient of State and Federal grant funding through which NCTD acquired certain railroad right-of-way assets from Atchinson, Topeka and Santa Fe Railroad Company (B.A. No. 1702) in December 1992. SDNR was formed by NCTD as a subsidiary public entity which has the responsibility for overseeing the operation of the rail line and equipment.

Information regarding SDNR was provided by Mr. James H. Ellis, attorney for SDNR, who explained that the SDNR entered into an agreement on August 18, 1994, with the National Railroad Passenger Corporation (Amtrak), a covered employer under the Acts (B.A. No. 8301) to operate the commuter rail services. Mr. Ellis stated that Amtrak will provide all daily services for the operation of the commuter rail and maintenance of the right-of-way and rail equipment, subject to the supervision of SDNR.

Section 1 (a) of the RRA (45 U.S.C. § 231(a)) insofar as relevant here, defines a covered employer as:

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs an services (except trucking service, casual service, and the casual operations of equipment or facilities) in connection with the transportation of passengers or property by railroad.....

¹ NCTD has been found not to be an employer under the Acts. Notice No. 95-57.

San Diego Northern Railway

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(2) Notwithstanding the provisions of subdivision (1) of this subsection, the term "employer" shall not include--

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(ii) any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general diesel-railroad system of transportation, but shall not exclude any part of the general diesel-railroad system of transportation now or hereafter operated by any other motive power. * * *

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition.

The evidence establishes that SDNR is not engaged in transportation of passengers or freight in interstate commerce. Further, there is no evidence that SDNR provides any service in connection with the interstate transportation of freight or passengers by rail within the meaning of section 1(a)(1)(ii) of the Act. Consistent with the Board's decision regarding the Orange County Transportation Authority, B.C.D. 94-47, (April 25, 1994), it is determined that San Diego Northern Railway is not an employer covered by the RRA and the RUIA.

Glen L. Bower

V. M. Speakman, Jr. (Dissenting
Opinion Attached)

San Diego Northern Railway

Jerome F. Kever

San Diego Northern Railway

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